

16-90118-jm, 16-90124-jm, 16-90125-jm
January 19, 2017
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGES OF JUDICIAL MISCONDUCT

Docket Nos. 16-90118-jm
16-90124-jm
16-90125-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On November 18 and December 12, 2016, the Complainant filed three complaints with the Clerk’s Office of the United States Court of Appeals for the Second Circuit pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 (the “Act”), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings, 249 F.R.D. 662 (U.S. Jud. Conf. 2008) (the “Rules”), charging a district judge (“Judge A”) and two magistrate judges (“Judges B and C”) of this Circuit with misconduct.

BACKGROUND

The Complainant filed a series of pro se civil rights actions challenging the conditions of his confinement. In one action, Judge A dismissed the complaint and denied the Complainant’s multiple requests for preliminary injunctive relief.

The appeal of that action is pending in the court of appeals.

In a second action, Judge B ruled that any concerns regarding new conditions of confinement should be addressed administratively or in a new complaint. Otherwise, all requests for injunctive relief were denied by a district judge, largely because the Complainant failed to establish a likelihood of success on the merits of his claims. The district court ultimately accepted Judge B's recommendation to grant summary judgment to the defendants, and the court of appeals dismissed the Complainant's appeal.

In the third action, Judge C granted the Complainant extensions of time for discovery, but when the Complainant complained about a lack of supplies, Judge C directed him to use his facility's grievance procedure. A district judge subsequently ruled that the Complainant may file a single copy of any filing, which the court would make available to the defendants. That action remains pending in district court.

The misconduct complaints allege that: [i] Judges A and B disregarded the Complainant's allegations of imminent danger, resulting in him being injured on four separate occasions; [ii] Judge A "denied aid and pending appeal 42 U.S.C. [§] 1997e request"; Judge B denied "help and access to the court to participate in

appeal”; and [iii] Judge C extended discovery deadlines, “but refused to hold non-defendants in contempt for denying . . . effective access to court,” thus making it impossible for the Complainant to mail all of his filings to the court.

DISCUSSION

The complaints are dismissed.

An allegation that a judge, in reaching a decision, neglected to consider fully all arguments presented, failed to comprehend the meaning or import of certain statutes or cases, or disregarded certain key facts or evidence is merely challenging the correctness of the judge’s decision. In other words, what such allegations contend is that the judge got it wrong, not that the judge engaged in judicial misconduct.

The allegations in the complaints fall entirely into this category. The complaints seek merely to challenge the Judges’ rulings and official actions in the underlying actions. Accordingly, the complaints are dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C.

§ 352(b)(1)(A)(ii); Rule 3(h)(3)(A) (“An allegation that calls into question the correctness of a judge’s ruling . . . , without more, is merits-related.”). Purely merits-related allegations are excluded from the Act to “preserve[] the

independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge's ruling." Rule 3 cmt. Such challenges can be pursued, to the extent the law allows, only through normal appellate procedures.

The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.